IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.779 OF 2007

Pramod Murlidhar Joshi & Anr. ...Petitioners

vs.

The Authorised Officer
Rupi Cooperative Bank Ltd. & anr. ...Respondents

Mr.S.S.Patwardhan for the Petitioners
Mr.Kishor Tembe for Respondent No.1.

CORAM: A.S.OKA,J.
DATE : JUNE 16, 2007.

P.C.:

1. By this Writ Petition under Article 227 of Constitution of India, the Petitioners have challenged the Judgment and Order dated 7th November 2005 passed by the learned Judge of the Co-operative Court as well as the Judgment and Order dated 23rd November 2006 passed by the learned Member of the Maharashtra State Cooperative Appellate Court.

2. The Petitioners filed a dispute under section 91 of the Maharashtra Cooperative Societies Act,1960. The prayer in the dispute is for passing a preliminary decree under Rule 7 of the Order XXXIV of the Code of Civil Procedure,1908 for redemption of a mortgage and for a decree directing the Respondents to execute a release deed in favour of the Petitioners after payment of legal dues. The first Respondent filed an Application praying that the issue of jurisdiction of the Co-operative court to entertain the dispute filed by the Petitioners may be decided as a preliminary issue. Accordingly, by order dated 24th June 2005, the preliminary

issue of the jurisdiction was framed. After hearing the parties, by order dated 7th November 2005 the learned Member of the Co-operative Court answered the issue against the Petitioners. The said order has been confirmed in an Appeal preferred by the Petitioners before the Cooperative Appellate Court.

3. The submission of the learned Counsel for the Petitioners is that the dispute between the Petitioners and the first Respondent was a dispute between a co-operative bank and its members touching the business of the society. He invited my attention to the averments made in the dispute. He stated that the Petitioners executed the mortgage in favour of the bank as a security for repayment of the loan advanced by the bank to the first Petitioner. The second Petitioner is the guarantor. He submitted that the business of the bank is of banking and the mortgage was executed by way of security for a loan transaction. He submitted that the banking being the business of the society concerned, the dispute between the Petitioners and the bank certainly touches the business of the said bank and therefore, the Co-operative Court has exclusive jurisdiction to entertain the dispute. The learned counsel for the first Respondent supported the impugned Judgments and orders. He placed reliance on the decision of learned Single Judge of this Court in case of B.S.S.Karkhana Ltd.Vs.Keshav (1994 Mh.L.J. page 1756).

4. I have considered the submissions made by the learned

Counsel for the parties. The substantive prayer in the dispute is of a redemption of mortgage executed by the first Petitioner in favour of the Rupee Co-operative Bank Ltd. It must be stated here that the said Rupee Co-operative Bank is not impleaded as an opponent in the dispute and the authorised officer of the said bank has been impleaded as a party.

5. It will be necessary to refer the decision of this Court in case of B.S.S.Karkhana Ltd. (supra). This was a case where a co-operative sugar factory invited tenders for construction of a godown. One of the members of the society submitted a tender who was given the contract of the construction. The dispute arose between the said member and the cooperative sugar factory. A dispute was filed by the cooperative sugar factory against the member for recovery of an amount. An objection to the jurisdiction of the Co-operative Court was raised. This court considered the question whether the Co-operative Court had jurisdiction to entertain and try the dispute. In paragraph 16 of the said decision the learned Single Judge has held thus :

> "16. With the advantage of the aforesaid rulings at hand, one has, therefore, to conclude **that the position of law as it boils down at present, is that the expression "any dispute" used in section 91(1) of the Act would mean a dispute arising out of the provisions of the Act and not a dispute which could arise independently of the provisions of the Act.**

> Consequently, therefore, when the dispute has arisen between the Society and a member about the matter which does not arise out of the provisions contained in the Act, that would not fall within the jurisidiction of the Co-operative Courts."
>
> (Emphasis added)

6. Turning back to the facts of the present case, it is obvious that the right of the first Petitioner to claim the redemption arises under the provisions of the Transfer of Property Act,1882. The dispute relating to redemption of mortgage does not arise out of the provisions of the said Act of 1960 and the dispute as regards redemption of mortgage arises independently of the provisions of the said Act of 1960. Therefore, the dispute raised by the Petitioners may be arising between the members of the society and the society, but the dispute has not arisen under the provisions of the said Act of 1960 and therefore, the same will not be covered by section 91 of the said Act of 1960.

7. In view of this legal position, there is no merit in the Petition. The courts below were right in holding that the Co-operative Court has no jurisdiction to entertain and try the dispute. Accordingly, Writ Petition is dismissed with no order as to costs.

8. It is made clear that no adjudication has been made on the right of the Petitioners of seeking redemption of mortgage.

JUDGE